

REMARKS

I. Introduction

Claims 1, 2 and 4-12 are pending in the present application. Claims 1, 8 and 10 have been amended. In view of the following remarks, it is respectfully submitted that all of the presently pending claims are in allowable condition.

II. Rejection of Claims 1, 2 and 4-12 under § 102(b)

Claims 1, 2 and 4-12 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 6,330,870 ("Inoue"). Applicants respectfully submit that the rejection should be withdrawn for at least the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element, *arranged exactly as in the claim*. See Lindeman Maschinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Additionally, not only must each of the claim limitations be identically disclosed, an *anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention*, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Amended independent claim 1 recites, in relevant parts, a method for controlling a camshaft control device in a start-up operation of an internal combustion engine, . . . "the camshaft control device including a locking position, the method comprising: determining, in the start-up operation of the internal combustion engine, whether there is an adaptation of the camshaft to the crankshaft so that the phase angle of the camshaft with respect to the crankshaft may be determined; . . . wherein, **when there is no release command and the adaptation has not occurred** and the camshaft control device is not in the locking position in the start-up operation of the internal combustion engine, the

camshaft control device is activated so that **the camshaft control device assumes a predefinable reference position that is different from the locking position**, and wherein the reference position is selected in such a way that **an idling operation of the internal combustion engine is enabled, and wherein the setpoint value is purposefully controlled in such a way that the camshaft control device lies outside the locking position to prevent an independent locking**.” Independent claims 8 and 10 have been amended to recite substantially similar features as the above-recited features of claim 1.

Initially, in contrast with the amended features of claims 1, 8 and 10, Inoue clearly does not teach or suggest **a separate “reference position that is different from the locking position.”** Inoue discloses that the internal combustion engine is started in a mechanically fixed locking position, i.e., Inoue clearly fails to teach or suggest that **“when there is no release command and the adaptation has not occurred and the camshaft control device is not in the locking position in the start-up operation of the internal combustion engine**, the camshaft control device is activated so that **the camshaft control device assumes a predefinable reference position that is different from the locking position.”** Inoue discloses identifying the locking position, in order to reach this position reliably upon shutdown of the engine, since not reaching the locking position upon shut-off of the internal combustion engine will lead to problems upon starting the engine (see, e.g., col. 21, l. 58-62). In order to prevent this failure of reaching the locking position, Inoue proposes a “lock-failure preventing control program” (column 21, lines 63 ff), which provides that, in the case of expected poor mobility, the camshaft controller always be operated in the vicinity of the locking position (column 22, lines 21 ff). In this manner, Inoue provides for the engine to be started in the locking position, but not in a reference position that is different from the locking position, as recited in independent claims 1, 8 and 10.

The present invention provides an approach that is fundamentally different than the approach disclosed by Inoue. In accordance with the present invention, during the start of the internal combustion engine, if it is determined that the camshaft is already outside of the locking position, the setpoint value of the camshaft is purposefully controlled in such a manner that the camshaft controller remains outside of the locking position and assumes a defined reference position, in order to prevent an inadvertent, independent locking of the camshaft controller. In addition, by purposefully controlling the camshaft, the actual position of the camshaft is prevented from changing in an indefinite manner without being clearly

controlled, and the internal combustion engine is prevented from starting in an uncontrolled manner. In this manner, if the camshaft controller is not in the locking position during the start, by driving the camshaft controller to a reference position different from the locking position, the present invention facilitates a reliable start of the internal combustion engine (despite the unclear locking status, i.e., unclear camshaft position), as well as facilitating free control of the camshaft controller. In contrast, Inoue does not suggest anything about purposefully controlling the setpoint value of the camshaft in such a manner that the camshaft controller remains outside of the locking position and assumes a defined reference position; instead, Inoue simply attempts to prevent the failure to reach the locking position upon shut-off of the engine, so that that the engine is always started in the locking position, i.e., a start of the engine in an undefined camshaft position is prevented. In addition, since the ultimate goal of Inoue is to ensure that the locking position is provided for the start of an engine, one skilled in the art would have absolutely no motivation to modify the teachings of Inoue to incorporate an additional, reference position different from the locking position.


For at least the foregoing reasons, independent claims 1, 8 and 10, as well as their dependent claims 2, 4-7, 9, 11 and 12, are allowable over Inoue. Withdrawal of the anticipation rejection of pending claims 1, 2 and 4-12 is respectfully requested.

CONCLUSION

In view of the above remarks, it is respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

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